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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Attorney Docket No. AUS920030419US1

IN RE APPLICATION OF:

Chen et al

Serial No. 10/617,525

Filed: 7/10/2003

For: Workout Processing System

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Examiner: Glenn E. Richman

Art Unit: 3764

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Brief is submitted in support of the Appeal in the above-identified application.

**CERTIFICATE OF MAILING
37 CFR 1.8(a)**

I hereby certify that this correspondence is being transmitted by fax to Group Fax Number 571-273-8300, or deposited First Class mail and addressed to "Honorable Commissioner For Patents, PO Box 1450, Alexandria, Virginia 22313-1450", on the date set forth below:

October 24, 2008

Date

/Robert V. Wilder/

Robert V. Wilder

Signature

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REAL PARTY IN INTEREST

The present application is assigned to International Business
Machines Corporation, the real party in interest.

RELATED APPEALS AND INTERFERENCES

No related Appeals or Interferences are currently pending.

STATUS OF THE CLAIMS

Claims 1-3, 5-7 and 9-19 are pending and stand finally rejected
by the Examiner as noted in the Final Office Action mailed August
4, 2008. Claims 4 and 8 have previously been canceled. The
rejection of claims 1-3, 5-7 and 9-19 is hereby being appealed.

STATUS OF AMENDMENTS

No Amendments have been filed subsequent to the Final Rejection
which was mailed on August 4, 2008.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The subject patent application includes pending independent
claims 1, 17, and 18, and the remaining claims ultimately depend
from and include all of the limitations of independent claim 1 or
independent claim 18. Claims 1 and 18 recite a method embodying

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the present invention, and claim 17 recites a medium embodying the present invention. A concise explanation of the claimed subject matter is defined in each of the claims, which, along with exemplary and non-exclusive specification and drawing references, are discussed below.

1. A method for operating a workout facility having a plurality of workout stations (*e.g.*, *inter alia*, 403, 405, 407 Fig. 4; p-10, 1-24 *et seq.*) arranged for use by individual users, said method comprising:

receiving identification (ID) signals (*e.g.*, *inter alia*, 1601, Fig. 16; p-10, 1-15 *et seq.*) at one of said workout stations, said ID signals being representative of an individual user, wherein said receiving is accomplished by receiving ID signals at a reading device located at said workout station, said ID signals being generated by an initial reading of a code contained on an article carried by said individual user (*e.g.*, *inter alia*, 301, Fig. 3; p-9, 1-5 *et seq.*);

measuring workout data generated by said individual user at said workout station (*e.g.*, *inter alia*, 1607, Fig. 16; p-19, 1-25 *et seq.*);

saving said workout data to a workout data file associated with said individual user when said user has finished using said workout station (*e.g.*, *inter alia*, 1515, Fig. 15; 1607, 1611, Fig. 16; p-18, 1-26 *et seq.*); and

determining when said individual user has finished using said

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workout station (*e.g., inter alia*, 1609, Fig. 16; p-19, 1-30 *et seq.*), said determining being accomplished by detecting when said ID signals are read for a second time at said workout station, said second reading signifying that said individual user has completed a workout at said workout station (*e.g., inter alia*, p-19, 1-31, *et seq.*).

2. The method as set forth in claim 1 wherein said workout data file is maintained at a server within said workout facility (*e.g., inter alia*, 401, Fig. 4; p-10, 1-20 *et seq.*)

3. The method as set forth in claim 1 wherein said receiving is accomplished by receiving ID signals transmitted from a transmitter device (*e.g., inter alia*, 301, Fig. 3; p-9, 1-10 *et seq.*) carried by said individual user.

4. Cancelled.

5. The method as set forth in claim 1 wherein said code is a bar code readable by an optical reading device (*e.g., inter alia*, 305, Fig. 3; p-9, 1-15 *et seq.*).

6. The method as set forth in claim 1 wherein said code is a magnetic code on a medium readable by a magnetic code reading device (*e.g., inter alia*, 305, Fig. 3; p-9, 1-15 *et seq.*).

7. The method as set forth in claim 3 and further including determining when said individual user has finished using said workout station (*e.g., inter alia*, 1609, Fig. 16; p-19, 1-30 *et seq.*), said determining being accomplished by detecting an

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absence of said transmitted ID signals at said workout station
(*e.g., inter alia*, p-20, 1-1 et seq.).

8. Cancelled.

9. The method as set forth in claim 1 and further including
displaying said workout data on a display device located at said
workout station (*e.g., inter alia*, 227 228, Fig. 2; p-8, 1-18 et
seq.).

10. The method as set forth in claim 1 and further including:

displaying said workout data file of said individual user on a
display device located at said workout station (*e.g., inter alia*,
227 228, Fig. 2; p-8, 1-18 et seq.).

11. The method as set forth in claim 10 wherein said workout data
file further includes a workout routine for said individual user,
said workout routine including specific workout protocols for
said individual user at each of said plurality of workout
stations (*e.g., inter alia*, 1300, Fig. 13; p-17, 1-4 et seq.).

12. The method as set forth in claim 11 and further including
displaying said specific workout protocols for said individual
user on said display devices at workout stations being used by
said individual user (*e.g., inter alia*, 1300, Fig. 13; p-17, 1-4
et seq.).

13. The method as set forth in claim 1 and further including
saving workout data from a plurality of workout stations to said

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162 workout data file (e.g., *inter alia*, 1607, Fig. 16; p-19, 1-25,
163 et seq.).

164
165 14. The method as set forth in claim 1 and further including
166 enabling reservation of selected workout stations by said
167 individual user (e.g., *inter alia*, 601, Fig. 6; p-12, 1-33 et
168 seq.).

169
170 15. The method as set forth in claim 14 and further including
171 displaying notice of said reservation of a reserved workout
172 station at a display device located at said reserved workout
173 station (e.g., *inter alia*, 1605, Fig. 16; p-19, 1-21 et seq.).

174
175 16. The method as set forth in claim 15 and further including
176 disabling said reserved workout station (e.g., *inter alia*, 1413,
177 Fig. 14; p-4, 1-11; p-17, 1-20 et seq.), said reserved workout
178 station being selectively enabled by said receiving of said ID
179 signals associated with said individual user at said reserved
180 workout station.

181
182 17. A medium programmed to provide operating signals when said
183 medium is read by a compatible reading device at a workout
184 facility computer system, said operating signals being effective
185 for causing said workout facility computer system to interact
186 with individual workout stations (e.g., *inter alia*, 403, 405, 407
187 Fig. 4; p-10, 1-24 et seq.) located within said workout facility
188 for:

189
190 receiving identification (ID) signals (e.g., *inter alia*, 1601,
191 Fig. 16; p-10, 1-15 et seq.) at one of said workout stations,

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192 said ID signals being representative of an individual user,
193 wherein said receiving is accomplished by receiving ID signals at
194 a reading device located at said workout station, said ID signals
195 being generated by an initial reading of a code contained on an
196 article carried by said individual user (e.g., *inter alia*, 301,
197 Fig. 3; p-9, 1-5 *et seq.*);
198
199 measuring workout data generated by said individual user at said
200 workout station (e.g., *inter alia*, 1607, Fig. 16; p-19, 1-25 *et*
201 *seq.*);
202
203 saving said workout data to a workout data file associated with
204 said individual user when said user has finished using said
205 workout station (e.g., *inter alia*, 1515, Fig. 15; 1607, 1611,
206 Fig. 16; p-18, 1-26 *et seq.*), said workout data file being stored
207 at said workout facility computer system; and
208
209 determining when said individual user has finished using said
210 workout station (e.g., *inter alia*, 1609, Fig. 16; p-19, 1-30 *et*
211 *seq.*), said determining being accomplished by detecting when said
212 ID signals are read for a second time at said workout station,
213 said second reading signifying that said individual user has
214 completed a workout at said workout station (e.g., *inter alia*, p-
215 19, 1-31, *et seq.*).
216
217 18. A method for operating a workout facility having a plurality
218 of workout stations arranged for use by individual users, said
219 method comprising:
220
221 receiving a request from a user to schedule a workout session

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222 using said workstations at said workout facility (e.g., inter
223 alia, 1103, Fig. 11; p-15, 1-15 et seq.);
224
225 enabling user access to a facility workout schedule for workout
226 stations within said workout facility (e.g., inter alia, 1117,
227 Fig. 11; p-15, 1-25 et seq.);
228
229 receiving scheduling input from said user (e.g., inter alia,
230 1119, Fig. 11; p-15, 1-28 et seq.), said scheduling input
231 defining a user workout schedule for said user at said workout
232 facility;
233
234 storing said user workout schedule at a workout server used by
235 said workout facility (e.g., inter alia, 1121, Fig. 11; p-15, 1-
236 30 et seq.);
237
238 reserving workout stations scheduled by said user to enable only
239 said user to use workstations at times designated in said user
240 workout schedule (e.g., inter alia, 800, Fig. 8; p-16, 1-25 et
241 seq.);
242
243 detecting when said user enters said workstation facility by
244 detecting a user identification (ID) signal transmitted from a
245 device carried by said user (e.g., inter alia, 433, Fig. 4; 1505,
246 Fig. 15; p-18, 1-14 et seq);
247
248 storing information indicating a presence of said user at said
249 workout facility in response to said detecting (e.g., inter alia,
250 1509, Fig. 15; p-18, 1-21 et seq);
251

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determining when said user is in proximity to a first workout station scheduled for use by said user (e.g., *inter alia*, 1601, Fig. 16; p-19, 1-15 *et seq.*);

displaying said user workout schedule on a display device viewable by said user from said first workout station in response to said determining (e.g., *inter alia*, 227 228, Fig. 2; p-8, 1-18 *et seq.*);

collecting workout data of said user while said user is working at said first workout station (e.g., *inter alia*, 1607, Fig. 16; p-19, 1-25 *et seq.*);

determining when said user departs from said first workout station (e.g., *inter alia*, 1609, Fig. 16; p-19, 1-29, *et seq.*);

updating said user workout schedule by recording said workout data of said user collected at said first workout station after said user has departed from said first workout station (e.g., *inter alia*, 1607, Fig. 16; p-19, 1-25 *et seq.*);

terminating said displaying after said determining that said user has departed from said first workout station (e.g., *inter alia*, 1609, Fig. 16; p-19, 1-29, *et seq.*); and

enabling other users to use said first workout station after said user has departed from said first workout station (e.g., *inter alia*, 1413, Fig. 14; p-4, 1-11; p-17, 1-20 *et seq.*).

19. The method as set forth in claim 18 wherein said scheduling

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input is received from a user wireless device (p-27, 1-10, et seq.) said user wireless device being located remotely from said workout server.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

I. Are claims 1-2, 5-6 and 9-17 unpatentable under 35 USC 103(a) over Shea?

II. Are claims 3, 7, 18-19 unpatentable under 35 USC 103(a) over Shea in view of Millington?

ARGUMENT

I. With regard to the rejection of claims 1-2, 5-6 and 9-17, as being unpatentable under 35 USC 103(a) over Shea, it is initially noted that claims 1, 17 and 18 are independent claims, claims 2-3, 5-7 and 9-16 are ultimately dependent from claim 1 and claim 19 depends from claim 18. In the Office Action mailed 2/25/2008, the earlier allowance of claim 8 was withdrawn in view of the "newly applied" Shea reference (U.S. Patent 7,056,265, herein referred to as "Shea"). However, it is noted that Shea was not "newly applied" as asserted but, in fact, had been cited and applied in the initial Office Action which was mailed 8/4/2006 and claim 8 was allowed in that Office Action over the then cited references which included both Shea and Millington. In response

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to the allowance of claim 8 in the initial Office Action, and in reliance upon, and agreement with the Examiner's direction that the substance of claim 8 is allowable if claim 8 were to be rewritten in independent form including all of the limitations of the base claim and any intervening claims, applicant included the substance of claim 8 and all intervening claims into amended independent claim 1. The Examiner then, in the 2/25/08 Office Action, rejected what the Examiner had previously stated would be allowable and does not cite any new references upon which to base the withdrawal of the earlier allowance. Since the substance of original claim 8 was allowable over both Shea and Millington on 8/4/2006, the date of the First Office Action, the very same substance of original claim 8 must still be allowable over the very same Shea and Millington references on 2/25/2008, the date of the Second Office Action and also on 8/4/2008, the date of the Final Office Action, since nothing substantive has changed and no new references have been cited.

It is further submitted that the cited KSR case cannot be properly applied to the facts of the present application. In the Final Office Action, the Examiner cites the KSR case and states that "...since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 USC 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere

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339 application of a known technique to a piece of prior art ready
340 for improvement". It is submitted that applicant has established
341 that the inventive combination created by the applicant is
342 "uniquely challenging and difficult for one of ordinary skill in
343 the art" as specifically stated beginning on page 1, line 24
344 through page 3, line 15, *inter alia*, of the present application.
345

346 Further, it is noted that the present invention has not been
347 rejected under 35 USC 102 and therefore the present invention is
348 not anticipated by the references, and there are differences
349 between the prior art and the present invention. Since inventors
350 Shea and Millington, both of whom, by definition are skilled even
351 beyond "one of ordinary skill in the art", endeavored but were
352 unable to anticipate the present invention, it is submitted that
353 the present invention must have been "uniquely challenging and
354 difficult for one of ordinary skill in the art" since proven
355 inventors Shea and Millington were unable to produce the present
356 invention. Applicant would be willing to submit an affidavit that
357 the inventive combination created by the applicant is "uniquely
358 challenging and difficult for one of ordinary skill in the art"
359 if such an affidavit would be helpful in allowing the claims of
360 the present application.
361

362 With regard to the specific claim rejections, claim 1 includes
363 "determining when said individual user has finished using said
364 workout station, said determining being accomplished by detecting
365 when said ID signals are read for a second time at said workout
366 station ...". The Examiner in rejecting the claim under 35 USC

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103(a) referencing only the Shea reference, admits that Shea does not disclose swiping the card at the completion of the workout but states that it would have been obvious to do so and that to do so is the same as pushing a "STOP key". It is respectfully submitted that the two are not alternatives since a swipe of the card gives a positive input and identifies the user whereas a STOP key can be inadvertently pushed or not pushed at all and does not give a positive indication that a **particular user** has finished using a **particular workstation**. Therefore, it cannot be "obvious" to use a card swipe in place of a STOP key since much more certain information is and may be transmitted using the card swipe which is not possible using only a STOP key. **The ID information is necessary in progressing through the workout schedule contained in the server for the identified user and such information cannot be confirmed using only a STOP key.** Thus the second use of an ID card is substantially different from the mere use of a STOP key - the two methods perform substantially different functions. The Shea reference does not even recognize the need for a positive ID input at the end of the user of a workout station much less disclose or suggest its use, and thus it is respectfully submitted that claim 1 is allowable under 35 USC 103(a) over Shea.

Since claims 2, 5, 6 and 9-16 ultimately depend from and include all of the limitations of claim 1, in addition to even further limitations as set forth in the individual claims themselves, it is submitted that claims 2, 5, 6 and 9-16 are also allowable under 35 USC 103(a) over Shea.

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Claim 17 is an independent claim directed to a medium programmed to provide operating signals to implement the method set forth in claim 1. Claim 17, as does claim 1, contains the language "determining when said individual user has finished using said workout station, said determining being accomplished by detecting when said ID signals are read for a second time at said workout station ...". Thus, for the reasons set forth above with respect to claim 1, it is respectfully submitted that claim 17 is also allowable under 35 USC 103(a) over Shea.

II. With regard to the rejection of claims 3, 7, 18-19 as being unpatentable under 35 USC 103(a) over Shea in view of Millington, it is initially noted that claims 3 and 7 are dependent claims ultimately depending from and including all of the limitations of claim 1, in addition to even further limitations as set forth in the individual claims themselves. Neither Shea nor Millington suggest the "second swipe" positive input limitation discussed above, for the reasons stated above, it is submitted that claims 3 and 7 are also allowable under 35 USC 103(a) over Shea, even in further view of Millington.

Claims 18 and 19 are also believed to be allowable over Shea in view of Millington. Many of the Examiner's references to the cited art do not disclose what the Examiner asserts they disclose, especially with regard to detailed claims 18 (*inter alia*, detect when user enters workout facility and storing info

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reflective thereof) and 19 (*inter alia*, remote input workout scheduling from user wireless device). Further, in the Office Action the Examiner cites a "Miller" reference and there is no "Miller" or corresponding patent number in the listing of cited references. It cannot be assumed that the Examiner intended to cite the Millington reference instead of Miller since the cited passage (col. 9, lines 37-57) contains no mention of "detecting when a user enters said workstation facility .." (emphasis added) as is disclosed (1505, Figure 15, page 9, line 29 and 433 Figure 4) and claimed (claims 18 and 19) in the present application. Thus claim 18 appears to be clearly allowable over Shea in view of Millington.

Applicant hereby requests the patent number of the Miller reference if Miller was meant to be cited so that applicant would have an opportunity to read the Miller reference for applicability.

With regard to claim 19, since neither Shea nor Millington discloses or suggests a system in which a user is enabled to input a workout schedule from a wireless device located remotely from the workout server as claimed in claim 19. The present invention enables a user to set-up his or her own workout schedule using a wireless device from outside of a workout facility and the input schedule is implemented and tracked upon detection that the user has entered through the entrance of the workout facility. Neither Shea nor Millington disclose or even remotely suggest this methodology. Thus it is submitted that

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claims 18 and 19 are also allowable under 35 USC 103(a) over Shea in view of Millington.

It should be noted that applicant is claiming only that the **total combination** of elements **and relationships** as recited in the claims as herein amended, is neither anticipated nor rendered obvious by the cited references. Applicant is aware the individual elements of any claim can be isolated, and, when standing alone, those elements can be found in existing references. However, a claim cannot be rejected under 35 USC 103 by a mere showing that all of the individual elements of the claim previously existed in the prior art. It is submitted to be inappropriate to search the prior art using applicant's own disclosure as a recipe, to find piecemeal elements in prior art references for individual claimed elements, and then to combine those references in a manner not contemplated by the prior art references, but disclosed only by the applicant, in order to reject applicant's own claims.

CONCLUSION

For the reasons stated above, applicant urges the Board to conclude that the rejections of claims 1-2, 5-6 and 9-17 as being unpatentable under 35 USC 103(a) over Shea, and the rejections of claims 3, 7, 18-19 as being unpatentable under 35 USC 103(a) over Shea in view of Millington, are not well-founded and should be reversed.

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479
480 Please charge IBM Corporation Deposit Account No. 09-0447 in the
481 amount of \$540.00 for submission of a Brief in Support of Appeal.
482 No additional fee or extension of time is believed to be
483 required; however, in the event an additional fee or extension of
484 time is required, please charge the fee, as well as any other fee
485 necessary to further the prosecution of this application, to the
486 above-identified deposit account.

487

488 Respectfully submitted,

489

490 /Robert V. Wilder/

491

492 Robert V. Wilder (Tel:512-246-8555)

493 Registration No. 26,352

494 Attorney for Applicant

495 4235 Kingsburg Drive

496 Round Rock, Texas 78681

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CLAIMS APPENDIX

1. A method for operating a workout facility having a plurality of workout stations arranged for use by individual users, said method comprising:
- receiving identification (ID) signals at one of said workout stations, said ID signals being representative of an individual user, wherein said receiving is accomplished by receiving ID signals at a reading device located at said workout station, said ID signals being generated by an initial reading of a code contained on an article carried by said individual user;
- measuring workout data generated by said individual user at said workout station;
- saving said workout data to a workout data file associated with said individual user when said user has finished using said workout station; and
- determining when said individual user has finished using said workout station, said determining being accomplished by detecting when said ID signals are read for a second time at said workout station, said second reading signifying that said individual user has completed a workout at said workout station.
2. The method as set forth in claim 1 wherein said workout data file is maintained at a server within said workout facility.

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3. The method as set forth in claim 1 wherein said receiving is accomplished by receiving ID signals transmitted from a transmitter device carried by said individual user.

4. Cancelled.

5. The method as set forth in claim 1 wherein said code is a bar code readable by an optical reading device.

6. The method as set forth in claim 1 wherein said code is a magnetic code on a medium readable by a magnetic code reading device.

7. The method as set forth in claim 3 and further including determining when said individual user has finished using said workout station, said determining being accomplished by detecting an absence of said transmitted ID signals at said workout station.

8. Cancelled.

9. The method as set forth in claim 1 and further including displaying said workout data on a display device located at said workout station.

10. The method as set forth in claim 1 and further including:

displaying said workout data file of said individual user on a display device located at said workout station.

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11. The method as set forth in claim 10 wherein said workout data file further includes a workout routine for said individual user, said workout routine including specific workout protocols for said individual user at each of said plurality of workout stations.

12. The method as set forth in claim 11 and further including displaying said specific workout protocols for said individual user on said display devices at workout stations being used by said individual user.

13. The method as set forth in claim 1 and further including saving workout data from a plurality of workout stations to said workout data file.

14. The method as set forth in claim 1 and further including enabling reservation of selected workout stations by said individual user.

15. The method as set forth in claim 14 and further including displaying notice of said reservation of a reserved workout station at a display device located at said reserved workout station.

16. The method as set forth in claim 15 and further including disabling said reserved workout station, said reserved workout station being selectively enabled by said receiving of said ID signals associated with said individual user at said reserved workout station.

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588
589 17. A medium programmed to provide operating signals when said
590 medium is read by a compatible reading device at a workout
591 facility computer system, said operating signals being effective
592 for causing said workout facility computer system to interact
593 with individual workout stations located within said workout
594 facility for:
595
596 receiving identification (ID) signals at one of said workout
597 stations, said ID signals being representative of an individual
598 user, wherein said receiving is accomplished by receiving ID
599 signals at a reading device located at said workout station, said
600 ID signals being generated by an initial reading of a code
601 contained on an article carried by said individual user;
602
603 measuring workout data generated by said individual user at said
604 workout station;
605
606 saving said workout data to a workout data file associated with
607 said individual user when said user has finished using said
608 workout station, said workout data file being stored at said
609 workout facility computer system; and
610
611 determining when said individual user has finished using said
612 workout station, said determining being accomplished by detecting
613 when said ID signals are read for a second time at said workout
614 station, said second reading signifying that said individual user
615 has completed a workout at said workout station.
616
617

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

618 18. A method for operating a workout facility having a plurality
619 of workout stations arranged for use by individual users, said
620 method comprising:
621
622 receiving a request from a user to schedule a workout session
623 using said workstations at said workout facility;
624
625 enabling user access to a facility workout schedule for workout
626 stations within said workout facility;
627
628 receiving scheduling input from said user, said scheduling input
629 defining a user workout schedule for said user at said workout
630 facility;
631
632 storing said user workout schedule at a workout server used by
633 said workout facility;
634
635 reserving workout stations scheduled by said user to enable only
636 said user to use workstations at times designated in said user
637 workout schedule;
638
639 detecting when said user enters said workstation facility by
640 detecting a user identification (ID) signal transmitted from a
641 device carried by said user;
642
643 storing information indicating a presence of said user at said
644 workout facility in response to said detecting;
645
646 determining when said user is in proximity to a first workout
647 station scheduled for use by said user;

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648
649 displaying said user workout schedule on a display device
650 viewable by said user from said first workout station in response
651 to said determining;
652
653 collecting workout data of said user while said user is working
654 at said first workout station;
655
656 determining when said user departs from said first workout
657 station;
658
659 updating said user workout schedule by recording said workout
660 data of said user collected at said first workout station after
661 said user has departed from said first workout station;
662
663 terminating said displaying after said determining that said user
664 has departed from said first workout station; and
665
666 enabling other users to use said first workout station after said
667 user has departed from said first workout station.
668
669
670 19. The method as set forth in claim 18 wherein said scheduling
671 input is received from a user wireless device, said user wireless
672 device being located remotely from said workout server.

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EVIDENCE APPENDIX

673

674

675 There are no items in this Appendix.

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676

RELATED PROCEEDINGS APPENDIX

677

678 There are no items in this Appendix.

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